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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 810

RIN: 0580-AB12

United States Standards for Wheat

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is revising the United States Standards for Wheat under the United States Grain Standards Act (USGSA) to change the definition of Contrasting classes (CCL) in the class Hard White wheat. This change will help facilitate the marketing of wheat.

EFFECTIVE DATE: May 1, 2014.

FOR FURTHER INFORMATION CONTACT: Patrick McCluskey at GIPSA, USDA, 10383 N. Ambassador Drive, Kansas City, MO, 64153; Telephone (816) 659-8403; Fax Number (816) 872-1258; e-mail Patrick.J.McCluskey@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The United States Grain Standards Act (USGSA) authorizes the Secretary of Agriculture to establish official standards of kind and class, quality and condition for wheat and other grains (7 U.S.C. 76). The United States Standards for Grain serve as the starting point to define grain quality in the marketplace. The United States Standards for Wheat are in the regulations at 7 CFR 810.2201-810.2205.

On November 27, 2009, GIPSA published an Advance Notice of Proposed Rulemaking (ANPR) in the *Federal Register* (74 FR 62257) requesting public comment on what revisions, if any, are needed to the current wheat standards. GIPSA received 13 comments from wheat producers, breeders, market development groups, industry associations, and exporters.

In the April 11, 2012, *Federal Register* (77 FR 21685-21690) GIPSA invited comments to our proposed rule identifying changes to the United States Standards for Wheat to:

- 1) revise the United States Standards for Wheat under the United States Grain Standards Act (USGSA) to change the definition of Contrasting classes (CCL) in Hard White wheat, and
- 2) revise the grade limits for shrunken and broken kernels (SHBN) in U.S. No. 1 and U.S. No. 2 wheat.

Proposed Rule Comment Review

GIPSA received 12 comments from wheat producer organizations, grain processor organizations, grain handlers, market developers, and others during the 60-day comment period for the proposed rule. On the basis of comments and other available information, GIPSA is implementing one of two proposed changes to the wheat standards. Some commentors requested additional changes which GIPSA believes are beyond the scope of the regulations. GIPSA will consider these comments for future policy changes. The following paragraphs address comments received regarding the proposed changes.

Contrasting Class Definition

GIPSA proposed changing the definition of contrasting classes for Hard White wheat so that Hard Red Winter wheat and Hard Red Spring wheat are no longer contrasting classes, and are considered only as wheat of other classes. Four comments were received supporting the proposal and no comment was received opposing the proposal. Therefore as set forth in the proposal, GIPSA is amending the grain standards to change the definition of contrasting classes in Hard White wheat so that Hard Red Winter wheat and Hard Red Spring wheat are no longer contrasting classes. The grade limits will remain unchanged.

Shrunken and Broken Kernel Grade Limits

GIPSA proposed making grade limits for SHBN more restrictive for U.S. No. 1 and U.S. No. 2, leaving the grade limits unchanged for U.S. No. 3, 4, and 5. In the proposed rule, GIPSA cited data for over 100,000 official export and domestic inspection samples for all wheat classes in market years 2005 through 2009.

GIPSA received 10 comments opposing the proposal and one comment supporting the proposal. Opposing comments from wheat producers in Oklahoma stated that more restrictive standards would place Oklahoma wheat growers at a competitive disadvantage. Those stakeholders suggested that because GIPSA's data was at the national level, it did not reflect the situation that Oklahoma wheat growers experience. Most other stakeholders who opposed the proposal, did so on similar grounds. North American Millers Association opposed the proposal stating GIPSA should consider a larger reduction in the grade limits. U.S. Wheat Associates supported the proposal stating their belief that the overall economic impact on wheat producers and the U.S. wheat industry would be positive.

Because of concerns raised over the issue of whether the data supported the proposal, GIPSA will not revise the standards to reduce the grade limits on SHBN for grades U.S. No. 1 and U.S. No. 2 wheat, but may propose these changes in a future rulemaking.

Effective Date

As specified in the USGSA (7 U.S.C. 76(b)), amendments to the standards cannot become effective less than one calendar year after public notification, unless in the judgment of the Secretary, the public health, interest, or safety require that they become effective sooner. In accordance with that section of the Act, it is determined that it is in the public interest to have this final rule effective on May 1, 2014, in order to coincide with the start of the 2014 wheat harvest, and to facilitate domestic and export marketing of wheat.

Executive Order 12866 and Regulatory Flexibility Act

The Office of Management and Budget designated this rule as not significant for the purposes of Executive Order 12866.

GIPSA has determined that this amendment would not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612). The RFA requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action.

Under the USGSA, grain exported from the U.S. must be officially inspected and weighed. Mandatory inspection and weighing services are provided by GIPSA and delegated states at 60 export elevators (including four floating elevators). All of these facilities are owned by multi-national corporations, large cooperatives, or public entities that do not meet the requirements for small entities established by the Small Business Administration. For North American Industry Classification System (NAICS) code 424510 “grain and field bean merchant wholesalers” the Small Business Administration size standard is 100 or fewer employees. Most users of the official inspection and weighing services, and these entities that perform these services, do not meet the regulations for small entities. In addition to GIPSA, there are 55 official agencies that perform official services under the USGSA, and most of these entities do not meet the requirements for small entities.

GIPSA is amending the wheat standards to change the definition of contrasting classes in Hard White wheat. GIPSA believes that this change to the wheat standards will facilitate the marketing of wheat.

The U.S. wheat industry, including approximately 159,527 wheat farms (USDA-2007 Census of Agriculture-updated), handlers, processors, and merchandisers are the primary users of the wheat standards and utilize the official standards as a common trading language to market wheat. The USGSA (7 U.S.C. 87f-1) requires that all persons engaged in the business of buying grain for sale in foreign commerce be registered with USDA. In addition, those individuals who handle, weigh, or transport grain for sale in foreign commerce must also register. The USGSA regulations (7 CFR 800.30) define a foreign commerce grain business as persons who regularly engage in buying for sale,

handling, weighing, or transporting grain totaling 15,000 metric tons or more during the preceding or current calendar year.

At present, there are 125 registrants who account for practically 100 percent of U.S. wheat exports, which for fiscal year 2011 totaled approximately 31,260,659 metric tons. While most of the 125 registrants are large businesses, some entities may be small. GIPSA believes that this proposed rule would not adversely affect or burden these users, nor add any additional cost for entities of any size.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. The USGSA provides in section 87g (7 U.S.C. 87g) that no subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the USGSA. Otherwise, this rule would not preempt any State or local laws, or regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Executive Order 13175

This proposed rule has been reviewed with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. This rule would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), the existing information collection requirements are approved under the Office of Management and Budget (OMB) Number 0580-0013. No additional collection or recordkeeping requirements are imposed on the public by this proposed rule.

E-Government Compliance

GIPSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 810

Export, Grain.

For reasons set out in the preamble, 7 CFR part 810 is amended as follows:

PART 810 - OFFICIAL UNITED STATES STANDARDS FOR GRAIN

1. The authority citation for part 810 continues to read as follows:

Authority: 7 U.S.C. 71-87k.

2. In § 810.2202, revise paragraph (b) to read as follows:

§ 810.2202 Definition of other terms.

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- (b) Contrasting Classes. Contrasting classes are:

- (1) Durum wheat, Soft White wheat, and Unclassed wheat in the classes Hard Red Spring wheat and Hard Red Winter wheat.

- (2) Hard Red Spring wheat, Hard Red Winter wheat, Hard White wheat, Soft Red Winter wheat, Soft White wheat, and Unclassed wheat in the class Durum wheat.

- (3) Durum wheat and Unclassed wheat in the class Soft Red Winter wheat.

(4) Durum wheat, Hard Red Spring wheat, Hard Red Winter wheat, Soft Red Winter wheat, and Unclassed wheat in the class Soft White wheat.

(5) Durum wheat, Soft Red Winter wheat, and Unclassed wheat in the class Hard White wheat.

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Larry Mitchell
Administrator
Grain Inspection, Packers and Stockyards Administration

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